IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 749 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT ON BEHALF OF C P GOHEL - Appellant
Versus
DAHYABHAI RAMJIBHAI GADHVI – Respondent

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Appearance :

MR MA PATEL ADDL PUBLIC PROSECUTOR for Appellant :
MR YOGESH S LAKHANI for Respondent :

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 15/11/2006

ORAL JUDGMENT

1. Heard Shri Patel, learned Addl.P.P. for the appellant – State of Gujarat and Shri R.S. Dholakia for Shri Lakhani, learned advocate for

the respondent – original accused.

2. The appellant – State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code' for short) challenging the order of acquittal dated 31st March, 1999 passed by the learned Judicial Magistrate First Class, Mandvi, Kutch in Criminal Case No. 121 of 1994 acquitting the present respondent – original accused of the offences punishable under Sections 7(1), 7(5) and Section 16(1)(A) of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'the PFA Act" for short).

3. This Court (Coram : J.R. Vora, J.) vide order dated 1.12.1999 granted leave and admitted the Appeal. It was taken up for hearing and final disposal today.

4. The case of the appellant in short deserves to be set out as under.

5. The concerned Food Inspector, at the relevant time while discharging his duties as such visited the shop of the accused on 29.9.1993 at about 16-30 hrs. at Mandvi. The accused was running his shop under the name of "Jai Shri Ram Dudh Centre". From the shop of the accused, in presence of panch witnesses and his helper, he purchased 660 ml. Mixed milk for the purpose of testing it by Public Analyst. He introduced himself as Food Inspector and notified to the vendor accused his intention to send milk for

analysis. The requisite notice under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as “the Rules” for short) came to be issued to him which is produced at Ex.26. The said notice bear the signature of the accused and the panch. The Food Inspector made payment of Rs.3-30ps. Towards the cost of the milk purchased and obtained cash memo, which is produced at Ex.27. The milk in the first instance collected in a steel vessel commonly known in vernacular as “Tapeli”. The said milk, thereafter, was divided into three parts and collected in a glass bottles and after adding preservative formalin in a requisite quantity and maxing the same with the milk, the bottles were sealed with wooden corks. The sample bottles, thereafter, were affixed with requisite label containing number, serial number, etc. The panchnama was drawn of the entire proceedings. On 30.9.1993, the Food Inspector went to his office at Bhuj and prepared memorandum in Form No. VII in five copies and seal impression was also affixed. Memorandum in Form No. VII along with slip signed on seal was again packed in a separate cover, which was also sealed and the same was also sent to the Public Analyst, Rajkot. The receipt of receiving the sample by Public Analyst was also issued. The said receipt is at Ex.30. The specimen copy of seal for sealing the sample was also sent in a separate cover and it

was sent to the Public Analyst. A copy of the forwarding letter is at Ex.31. The acknowledgment due showing that cover was received, is at Ex.32. The copy of the memorandum in Form No. VII is at Ex.33. The remaining 2 bottles were sent to Local Health Authority, Bhuj. The office copy of the letter is produced at Ex.35. The report of the Public Analyst dated 22.10.1993 containing the opinion of the Public Analyst that as the sample milk was not in conformity with the standards and parameters prescribed under the PFA Rules, the sample milk was opined to be adulterated. The deficiency in respect of fat contained was noticed. The milk ought to have fat contained of 4.5%, whereas, the sample milk found to contain milk fat of only 2%. In rest of the other test, the parameters were met by the sample milk. After obtaining necessary sanction from the concerned authority, the complaint came to be lodged. The complaint was lodged on 10.2.1994. After lodging the complaint, the requisite notice under Section 13(2) of the Act came to be issued to the accused so as to inform him about his right to have the sample further tested before the Central Food Laboratory. After recording plea of the accused on 18.8.1994, denying the charge, the trial commenced. The evidences were recorded and the case of the prosecution was put to the accused and he was called upon to make further statement under

Section 313 of the Code, which came to be recorded on 18.11.1998, wherein, the accused has completely denied the case of the prosecution. After appreciating the evidence on record, the learned trial Court has come to the conclusion that the accused were not guilty of the charges and hence, he was acquitted vide impugned order dated 31st March, 1999.

6. Shri Patel, learned APP has vehemently submitted that the order of trial Court acquitting the accused being erroneous, the same deserves to be quashed and set aside. Shri Patel has submitted that the mandatory provisions in respect of Collecting the sample of milk and sealing the same and sending it to the Public Analyst were scrupulously followed and therefore, it cannot be said that there was any lapse on the part of the Food Inspector in following the procedure for collecting, sealing and sending the same to the Public Analyst. Shri Patel has further submitted that as the order and judgment of the learned trial Court are contrary to law and evidences on the record, the same deserves to be quashed and set aside. Shri Patel has submitted that when the Food Inspector has narrated in his deposition that he had cleaned the bottles, there cannot be said to be a non-compliance of mandatory provisions of Rule 14 of the Rules. Shri Patel has submitted that learned Magistrate has erred in appreciating the fact that requisite amount of formalin was in fact mixed

with the sample milk and therefore, at what stage it was added, whether, it was added in the first vessel or whether it was added in a bottle when the sample was collected and therefore, the fact that it was added in the sample milk, are not have been held against the prosecution by the learned Magistrate. Shri Patel has further submitted that learned Magistrate has erroneously held that milk was not stirred before it was taken. Shri Patel has submitted that the trial Court ought not to have acquitted the accused when it was clearly opined by the Public Analyst in his report that the sample food article did not contain the minimum milk fat, as required under law. Shri Patel has submitted that as the food article in question was adulterated, the order of trial Court deserves to be quashed and set aside and the accused respondent deserves to be convicted and appropriate punishment be inflicted upon him.

7. Shri Dholakia, for the respondent original accused has submitted that this being an acquittal appeal, the Court may not interfere with the findings and order of acquittal unless and until, it is aptly demonstrated by the appellant that findings are so perverse as to result into miscarriage of justice. In absence of such plea, the finding of acquittal deserves to be upheld even on the grounds independent of the grounds taken on which the acquittal is based. Shri Dholakia has supported the order of

acquittal and submitted that the order is just and proper and same deserves to be upheld. Shri Dholakia has submitted that it was a case of the accused respondent right from the beginning that the Food Inspector had collected the sample from the milk, which was meant for his family consumption. Shri Dholakia has invited this court's attention to the various suggestions made in the cross-examination of the concerned Food Inspector, who had collected the sample and indicated that it was a case of the accused that the Food Inspector had visited the shop in the evening hours when the shop keeper accused was cleaning the vessels. He was very small time vendor and he himself was engaged in cleaning the vessel and the vessel wherefrom the milk was collected, was actually hung on the motorcycle standing near the shop. Shri Dholakia has further submitted that the deficiency in fat content would create a possibility that the vendor may not be responsible for the deficiency as it is not the case that fat contained was reduced due to addition of any other substance like water for increasing the quantity of milk. Shri Dholakia has further submitted that it was a mixed milk and it was taken only when the shop was on the verge of being closed for the day. Shri Dholakia has submitted that deposition of the panch witness and Food Inspector deserves to be appreciated in its true perspective and therefore, the order of acquittal cannot be said

to be perverse so as to result into miscarriage of justice and therefore, same deserves to be upheld.

8. This Court has perused the original records and documents and heard the counsel of the respective parties at length.

9. The following emerge from the record.

(a)The concerned Food Inspector has collected the mixed sample milk on 29.9.1993 at 16-30 hrs. in the evening. The total quantity of milk, wherefrom the sample was collected was only about 3 ltrs. Only. 3 lts. total milk was contained in an aluminum jar.

(b) The Food Inspector had collected the sample in presence of panch witness and his helper. The sample of milk initially collected only from steel vessel and thereafter, it was poured into the glass bottle meant for collecting the sample.

(c.) The sample milk was collected with the help of measuring units.

(d) The sample milk is shown to be deficient only on account of lesser fat contained. As per the limit, it has to be of 4.5% and what was found was 2% only.

(e)Notice under Section 13(2) of the Act came to be issued on 11.2.1994.

(f) The panch witness Ashwinbhai Ishwarbhai Naik, PW-2 has deposed in his cross examination that area of the shop was only 3X4 foot. He has further admitted in his cross-examination that

the vendor accused, at that time, was cleaning the vessel. He has also admitted that in a big vessel, other vessels were kept and they were being washed with water. He has further admitted that the Jar, wherefrom the sample milk was taken, was hung with the help of hook on the motorcycle parked outside the shop. He has further stated in his deposition that the said Jar, wherefrom, the sample milk was taken by the helper from the motorcycle and kept at the counter of the shop. He has further stated that helper had with the help of measuring unit collected the sample and poured into the steel vessel. He has further submitted that the helper has collected the sample in the steel vessel, which was cleaned by the accused. He has also admitted in his cross-examination that neither the Food Inspector nor the helper cleaned the vessel before taking milk. He has also admitted in his cross-examination that Food Inspector did not show that the vessel, in which, the sample was collected was cleaned. He has stated that even the measuring units was under the process of cleaning and at that time, it was used for collecting the sample. He has also admitted that milk was not stirred and made homogeneous before sample was collected. He has also admitted that the panchnama was drawn by the Food Inspector and he had only signed it. It is important to note that this witness has not been declared as hostile by the prosecution.

(g) Shri Patel, learned APP could not point out that the witness was ever declared as hostile by the prosecution. Shri Patel has submitted that even what is stated by the witness in his cross-examination is also not contrary to what is stated by the Food Inspector in his examination-in-Chief or the complaint.

10. The Apex Court in case of Jagan M. Sheshadri Vs. State of Tamilnadu, reported in 2002 SC 3299, states that when the witness is not declared hostile and when he is making statement supporting the case of the defence, then, the say of the witness has to be accepted as it is. In the instant case, the panch witness has clearly deposed in his testimony that the sample food milk was collected when the shop was being closed for a day, vessels were being cleaned by the vendor -accused and the milk jar was also hung on the motorcycle outside the shop. This deposition supports the suggestion made by the defence lawyer to the complainant that milk was meant for his consumption and it was not made for sale. The factum of compliance of provisions of Rule 14 of the Rules also remains to be established. The deposition of the panch witness and deposition of the prosecution witness No. 1 go to show that the prosecution has not established the due compliance with mandatory provisions of Rule 14 of the Rules and therefore, this Court is of the considered view that as the prosecution has not proved its case

beyond reasonable doubt, the order of acquittal deserves to be sustained.

11. In the result, this Court is of the view that order of acquittal impugned in the present Appeal does not call for any interference and the Appeal deserves to be dismissed and is accordingly dismissed.

(S.R.BRAHMBHATT, J.)

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